



## **ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-OPP-2009-0191; FRL-9380-4]**

### **Organic Arsenicals; Amendments to Terminate Uses; Amendment to Existing Stocks Provisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA issued a document in the **Federal Register** of September 30, 2009 (74 FR 50187) (FRL-8437-7) concerning the cancellations and amendments of pesticide products containing organic arsenicals. A portion of the voluntary cancellation request giving rise to the 2009 document was conditioned upon the convening of a public scientific peer review process that would address the mode of action for carcinogenic effects of inorganic arsenic. Because the peer review process has not yet occurred, the cancellations of the sod farm, golf course, and highway rights-of-way uses identified in the 2009 document were improperly finalized, and the existing stocks provisions for all remaining products containing the organic arsenical monosodium methanearsonate (MSMA) will be corrected as noted in Unit II. of this document. In addition, this document clarifies that existing stocks of products already in the hands of users as of December 31, 2010, containing MSMA labeled for all uses, except cotton, sod farms, golf courses, and highway rights-of-way and products containing disodium methanearsonate (DSMA), calcium acid methanearsonate (CAMA), and cacodylic acid and its sodium salt, can be used legally until they are exhausted, provided that such use complies with the EPA-approved label and labeling accompanying the affected product.

**FOR FURTHER INFORMATION CONTACT:** Tom Myers, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8589; email address: *myers.tom@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

*B. How Can I Get Copies of this Document and Other Related Information?*

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2009-0191, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

## **II. Background**

The voluntary cancellation request identified in the 2009 document (74 FR 50187) was based upon a negotiated Agreement in Principle to Implement the Organic Arsenicals Reregistration Eligibility Decision dated January 16, 2009. Under that Agreement, certain uses were to be cancelled unconditionally, while others were subject to future cancellation conditionally. The products that were cancelled unconditionally in the 2009 document were MSMA labeled for residential; forestry; non-bearing fruit and nuts; citrus, bearing and non-bearing; bluegrass, fescue and ryegrass grown for seed; drainage ditch banks; railroad, pipeline, and utility rights-of-way; fence rows; storage yards; and similar non-crop areas and all products containing DSMA, CAMA, cacodylic acid and its sodium salt. Regarding the golf course, sod farms, and highway rights-of-way uses, paragraph 3 of that agreement provided that EPA would convene a public meeting of either the Agency's Scientific Advisory Board, the Scientific Advisory Panel, or both to evaluate any new data on the mode of action of inorganic arsenicals, and paragraph 6 of the agreement provided that, before the cancellations of golf course, sod farms, and highway rights-of-way uses of MSMA would take effect, EPA would make a written determination whether EPA believes that the science on the mode of action has changed sufficiently to warrant the continued registration of those uses. Thus, a portion of the cancellation request and existing stocks provision of the 2009 document were conditioned upon the timely completion of the peer review process and EPA's written determination thereto.

In light of a Congressional directive to have the National Academy of Sciences (NAS) look at the mode of action for carcinogenic effects by inorganic arsenic, EPA and

the arsenic registrants recently agreed to modify paragraph 3 of the agreement to include the NAS as a third potential peer review body, one of which must hold a public meeting on the mode of action before the last use cancellations can be finalized. It is EPA's current intention to rely on the NAS for the peer review of the mode of action issue although EPA retains the right to utilize either of the Agency's scientific peer review bodies if it later determines that would be more appropriate. The NAS final report is currently scheduled to be completed in late 2015. See the letter from Richard P. Keigwin Jr., Director, Pesticide Re-evaluation Division, to Lynn Bergeson on behalf of the Organic Arsenical Products Task Force dated September 14, 2012 regarding the modification to paragraph 3 of Agreement in Principle, located in docket number EPA-HQ-OPP-2009-0191.

In the cancellation order of the 2009 document registrants would have been prohibited from selling and distributing products containing MSMA for use on sod farms, golf courses, and highway rights-of-way after December 31, 2012. Persons other than registrants would have been prohibited from selling and distributing products containing MSMA for use on sod farms, golf courses, and highway rights-of-way after June 30, 2013, and after December 31, 2013 use of products containing MSMA labeled for all uses, except cotton would have been prohibited. All of those prohibitions were predicated, among other things, upon the convening of a scientific peer review to evaluate the mode of action of inorganic arsenicals, and the agreement contained a provision delaying the effective date of cancellation (and the related existing stocks provision) until such time as the Agency provides a written determination regarding the

peer review evaluation. Because that peer review process has not yet occurred, the related cancellations can not yet be finalized.

Pursuant to the agreement, a number of registrants amended their registrations to require the addition of label statements identifying December 31, 2013 as the last date the product could be used legally on sod farms, golf courses, and highway rights-of-way. In light of the fact, as discussed in this Unit, that the cancellations of products registered for use on sod farms, golf courses, and highway rights-of-way did not become effective in 2009, and that these uses remain registered, registrants have submitted labels removing the restrictive statement prohibiting use of the product on sod farms, golf courses, and highway rights-of-way after December 31, 2013. All products with labels that include the prohibitive language must be used according to their labels. EPA intends to issue a new cancellation order when and if cancellation of these uses is proper under the terms of the agreement.

Finally, as to the uses that were cancelled in the 2009 document without regard to the conduct of a peer review of the mode of action of inorganic arsenicals, EPA is clarifying that existing stocks of products in users' hands as of December 31, 2010, containing MSMA labeled for residential; forestry; non-bearing fruit and nuts; citrus, bearing and non-bearing; bluegrass, fescue and ryegrass grown for seed; drainage ditch banks; railroad, pipeline, and utility rights-of-way; fence rows; storage yards; and similar non-crop areas and products containing DSMA, CAMA, cacodylic acid and its sodium salt, can be used legally until they are exhausted, provided that such use complies with the EPA-approved label and labeling accompanying the affected product. This was the intent

of the original order, but some language in the order may have suggested incorrectly that such use of existing stocks would be terminated after December 31, 2013.

### **III. What Does this Document Do?**

In light of the fact that a portion of the cancellation was improperly finalized, EPA is issuing this document to alert registrants, users, and others that the cancellation of products registered for use on sod farms, golf courses, and highway rights-of-way in the 2009 document is not effective, and that the order and existing stocks provision did not go into effect on September 30, 2009. That portion of the cancellation order will not be proper until EPA has addressed in writing the recommendations of a peer review panel pursuant to paragraph 6 of the Agreement in Principle. When and if that portion of the voluntary cancellation becomes effective, persons other than registrants will have at least six additional months to sell and distribute existing stocks of the cancelled product, and users will have at least one additional year to use existing stocks of cancelled product (provided use is consistent with the previously-approved labeling of the particular product in the users' hands).

In addition, EPA is clarifying that existing stocks of products in users' hands as of December 31, 2010, containing MSMA labeled for residential; forestry; non-bearing fruit and nuts; citrus, bearing and non-bearing; bluegrass, fescue and ryegrass grown for seed; drainage ditch banks; railroad, pipeline, and utility rights-of-way; fence rows; storage yards; and similar non-crop areas and products containing DSMA, CAMA, cacodylic acid and its sodium salt, can be used legally until they are exhausted, provided that such use complies with the EPA-approved label and labeling accompanying the affected product.

**List of Subjects**

Environmental protection, MSMA, organic arsenicals, pesticides.

Dated: March 19, 2013.

Richard P. Keigwin Jr.,

*Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.*

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